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102D CONGRESS
1st Session

COMMITTEE PRINT

WMCP:
102-28

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT INITIATIVE REPORT
FROM THE
SUBCOMMITTEE ON OVERSIGHT

NEED FOR TAXPAYER BILL OF RIGHTS LEGISLATION AND REFORM OF THE INTERNAL REVENUE SERVICE

INCLUDING LEGISLATIVE AND ADMINISTRATIVE
RECOMMENDATIONS OF THE SUBCOMMITTEE

Report No. 6

NOVEMBER 14, 1991

Prepared for the use of the Committee on Ways and Means by its staff

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U.S. GOVERNMENT PRINTING OFFICE
48-849 WASHINGTON : 1991

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-036966-5

H782-48

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LETTER OF TRANSMITTAL

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, D.C., November 14, 1991.

The Honorable DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are submitting to the Committee on Ways and Means the report of the Subcommittee on Oversight on the need for taxpayer bill of rights legislation and reform of the Internal Revenue Service (IRS). This report was approved by the Subcommittee on a bipartisan basis on November 13, 1991, and is the result of the Subcommittee's continuing oversight of IRS practices, policies and procedures. We respectfully request that the Committee on Ways and Means review the Subcommittee's report and take action on the Subcommittee's recommendations in a timely manner.

The Subcommittee held five sessions on IRS operations during the first session of the 102nd Congress, including a hearing on the 1990 filing season and on the fiscal year 1992 budget for the IRS, site visits to IRS service centers and a toll-free telephone taxpayer assistance center during the filing season, and hearings on the need for additional taxpayer rights legislation. The attached report provides a brief background on the Subcommittee's 33 findings with regard to problems taxpayers face with the administration of our tax system, and the Subcommittee's recommendations for administrative and legislative change. We intend to introduce these proposals as the "Taxpayer Bill of Rights Act of 1991."

We believe that the Subcommittee's proposals, both individually and as a package, will provide taxpayers with long-needed and significant additional protections and safeguards in their dealings with the IRS. The Subcommittee believes that the adoption of these recommendations will improve administration of the Federal tax system and provide more fairness to taxpayers in their efforts to comply with the tax laws.

Sincerely,

RICHARD T. SCHULZE,
Ranking Minority Member.

J. J. PICKLE,
Chairman.

Attachment

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REPORT OF THE SUBCOMMITTEE ON OVERSIGHT ON THE NEED FOR TAXPAYER BILL OF RIGHTS LEGISLATION AND REFORM OF THE INTERNAL REVENUE SERVICE

BACKGROUND

The Subcommittee on Oversight monitors Internal Revenue Service (IRS) practices and procedures on an ongoing basis. During the first session of the 102nd Congress, the Subcommittee held several hearings and site visits to review IRS operations, practices, and procedures. On March 20, 1991, the Subcommittee held a hearing on the 1990 filing season and the fiscal year 1992 budget for the IRS. The Subcommittee conducted site visits to IRS service centers in Memphis, Tennessee, and Covington, Kentucky, and a toll-free-telephone taxpayer assistance center in Cincinnati, Ohio, during the 1991 filing season. Hearings on the need for additional taxpayer rights legislation were held on July 18, and September 25, 1991. These hearings and site visits, along with the continuing stream of correspondence and telephone calls to the Subcommittee and Members' offices from taxpayers complaining about the IRS, serve as a basis for the Subcommittee's proposals and recommendations for taxpayer safeguard reforms.

The Committee on Ways and Means has acted, on numerous occasions in recent years, to better protect the rights and interests of taxpayers in resolving their disputes with the IRS. In the Tax Equity and Fiscal Responsibility Act of 1982, the Committee included provisions to require the IRS to give timely notice of levy, to increase the amounts exempt from levy, to permit damages in the case of wrongful levy, and to permit the release of liens under certain circumstances. In the Deficit Reduction Act of 1984, the Committee added innocent-spouse provisions. In the Omnibus Budget Reconciliation Act of 1985, the Committee changed the rules for awarding attorney fees and costs. In the Tax Reform Act of 1986, the Committee provided the IRS authority to abate interest due to errors or delays by the IRS. The most recent comprehensive effort to provide taxpayer safeguards involved enactment of the "Omnibus Taxpayer Bill of Rights," as part of the Technical and Miscellaneous Revenue Act of 1988.

Since passage of these legislative measures, the Subcommittee on Oversight has continued to review cases in which taxpayers feel they have been treated unfairly in resolving their tax disputes with the IRS. The Subcommittee has conducted an extensive review of recommendations for improvements to the tax system made by individual taxpayers, tax professionals, IRS employees, and the Administration. During the Subcommittee's recent hearings on the need for additional taxpayer bill of rights legislation, the Subcommittee received testimony and recommendations from the IRS Taxpayer Ombudsman, the IRS Commissioner, the Assistant Secretary

of the Treasury for Tax Policy, and from a variety of public witnesses. Based on the Subcommittee's ongoing investigation of IRS practices and procedures, the Subcommittee found that taxpayers continue to experience significant difficulty in working with the IRS to resolve their tax disputes and in complying with the requirements of the Federal tax system. The Subcommittee believes oversight of the IRS and protecting the rights of taxpayers must be a continuing effort.

Many of the problems that the Subcommittee has identified are not new. Rather, they are timeworn problems that need to be resolved. Many of the problems taxpayers face continue to persist due to lack of attention to the problem. Many of the problems have been brought to the attention of IRS's senior management, time and time again, but remain unresolved due to a lack of commitment to correct them. In some instances, the problems are the result of the statutory limitations in current law, which the Congress should address. Others are the result of shortcomings in IRS regulations, policies, or procedures which require immediate reform.

The following are 33 areas in which the Subcommittee has found that taxpayers are encountering significant difficulty in dealing with the IRS, and the Subcommittee's recommendations for reform:

1. CREATION OF INDEPENDENT TAXPAYER ADVOCATE

The Office of the Taxpayer Ombudsman was created by the IRS in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayer's advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers; relays ideas from the public concerning tax administration; and identifies areas of the tax law that confuse or create an inequity for taxpayers, or put an unfair administrative burden on the IRS. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at his discretion. In order to ensure that the Taxpayer Ombudsman has the necessary stature to fully represent the interests of taxpayers, this office should be elevated to the highest level within the IRS, comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is made more fully aware of the difficulties taxpayers are encountering, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas which are causing taxpayers to encounter serious problems when dealing with the IRS.

Recommendation: Statutorily establish the position and office of the Taxpayer Advocate, within the IRS at a level equal to that of the IRS Chief Counsel and subject to Senate confirmation. Require the Taxpayer Advocate to make an annual report to the tax-writing committees to include: a description of the 20 most serious problems taxpayers encounter when dealing with the IRS, the Taxpayer Advocate's recommendations for administrative and legislative actions to resolve these and other problems, and such other information as the Taxpayer Advocate may deem advisable. Require the Commissioner to

establish a tracking system and internal procedures that will ensure a formal IRS response to all recommendations submitted to the Commissioner by the Taxpayer Advocate.

2. EXPAND TAXPAYER ASSISTANCE ORDER (TAO) AUTHORITY

Internal Revenue Code (IRC) section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO) if, "in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary." The requirement that the significant hardship be "as a result of the manner in which the internal revenue laws are being administered . . ." has resulted in confusion as to the circumstances which justify the possible issuance of a TAO. The most frequent situation where a TAO is sometimes needed, but not authorized under present law, involves income tax refunds which become desperately needed to relieve severe hardship on the part of taxpayers. Such hardships are not in any "manner precipitated by the way in which the IRS is administering the tax laws." Another example of this kind of problem involves the reissuance of checks which have been sent by the IRS to an address at which the taxpayer no longer resides. While the mailing of the check to the incorrect address might in no way be due to the fault of the IRS, the normal delays in reissuing such a check may well cause great hardship for the taxpayer. A final example of this kind of problem occurs when the IRS Collection Division takes an enforcement action when the taxpayer has had no actual notice of the tax deficiency and is not afforded any opportunity to obtain an administrative review of the validity of the deficiency. In such a case, it is appropriate for the Taxpayer Ombudsman to issue a TAO to temporarily stay the IRS collection action in order to allow for a review of the appropriateness of the proposed action.

Recommendation: Amend IRC section 7811(b)(2) to provide the Taxpayer Advocate with broader authority to intervene on behalf of taxpayers and provide authority to take positive action with respect to taxpayers' cases.

3. IMPROVEMENTS RELATING TO INSTALLMENT AGREEMENTS

Installment agreements are monthly payment plans that the IRS grants to taxpayers who cannot otherwise pay in full the taxes they owe. While the IRS is authorized by IRC section 6159 to enter into these agreements, their terms and conditions are established pursuant to IRS regulations. These requirements are sometimes not fully understood by taxpayers which may lead to subsequent defaults on these agreements. The IRS considers an installment agreement subject to default if: the taxpayer fails to fully and timely make installment payments; the IRS determines that the financial condition of the taxpayer has changed; the taxpayer did not give correct and complete financial information when applying for the installment agreement, or the taxpayer fails to satisfy other tax liabilities on time. Also, taxpayers are subject to "failure to pay" penalties, even though they have entered into an installment

agreement and, thus, are willing to pay their tax liability in full and with interest over time. Taxpayers who come forward and negotiate a payment plan with the Government should not, as a matter of fairness, be penalized for their inability to pay. Also, IRC section 6159 currently requires the IRS to give the taxpayer 30-day notice before terminating an installment agreement, if it is determined that the financial condition of the taxpayer has changed. However, no notice is required if the taxpayer defaults for any other reason. In these cases, the IRS may unilaterally terminate the installment agreement with no notice to the taxpayer as to the reason for cancellation.

Recommendation: Amend IRC section 6159 to require the IRS to include in the instructions for filing Federal income tax returns the rules and procedures for requesting installment agreements. Amend IRC section 6651 to prevent the IRS from imposing the "failure to pay" penalty for taxpayers who promptly enter into installment agreements and meet the conditions of the agreements. Also, require the IRS to notify taxpayers 30-days before cancelling installment agreements for any reason other than that the collection of tax is determined to be in jeopardy, and to include in such notification the specific reasons the IRS considers the agreement to be in default.

4. EXTEND INTEREST-FREE PERIOD FOR REMITTING TAX

Currently, when the IRS sends a first notice to a taxpayer asking for payment, the statute provides a ten-day interest-free period. This provision was designed to give taxpayers time to receive the notice and pay the amount due. IRS service center directors and practitioners alike say the ten-day requirement is one of the most common complaints from taxpayers who are trying to comply with the law. Because it is virtually impossible to timely remit payment within the 10-day period, particularly if the mail has delayed delivery of the notice, the IRS must recompute interest and send another notice to taxpayers.

Recommendation: Amend IRC section 6601(e)(3) to extend the interest-free period provided to taxpayers for the payment of the tax liability reflected in the first notice from 10 days to 21 days, when the total tax liability shown on the notice of deficiency is less than $100,000.

5. ELECTION TO FILE JOINT RETURN WITHOUT MAKING FULL PAYMENT

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded under current law from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election. The IRS should allow taxpayers to change their filing status without full payment.

Recommendation: Repeal the provision that requires full payment of tax liabilities as a precondition to taxpayers switching from married-filing-separate status to married-filing-jointly status.

6. AUTHORITY TO WITHDRAW NOTICE OF IRS LIENS

A notice of tax lien provides public notice that a taxpayer owes the Government money. Under current law, the IRS has no authority to withdraw a notice of lien, once it has been recorded, if there is any remaining tax deficiency. The IRS should be given discretionary authority to withdraw a notice of lien when it is in the best interest of the taxpayer and the Government. For example, the IRS should be given discretion to withdraw notices of liens, without prejudice against future refiling, if: the original filing of such lien was premature or otherwise not in accordance with the administrative procedures of the IRS; the taxpayer has entered into an installment agreement for the payment of the tax liability with respect to which the lien was imposed; or, the withdrawal of the notice will facilitate the collection of the tax deficiency. Also, under current procedures, the IRS is not required to notify creditors if the IRS erroneously files a notice of tax lien.

Recommendation: Provide the IRS with authority to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer when it is ". . . in the best interest of the taxpayer and the Government." Require that, in the case of such an erroneous lien, the IRS make reasonable efforts to notify major credit agencies and financial institutions of the erroneous filing of the lien, when specifically requested to do so by the taxpayer, subject to reasonable limitations.

7. AUTHORITY TO RETURN LEVIED MONIES

Under current law, there are situations where the IRS cannot return levied-upon amounts, even when it believes doing so would be equitable and in the best interest of the taxpayer and the Government. First, current law requires banks and other financial institutions to hold levied-upon money for 21 days after being served with a levy, in order to give taxpayers time to notify the IRS of errors. Banks are remitting the money to the IRS before the 21-day period has expired and the IRS cannot return these prematurely remitted amounts. Second, if the IRS believes that collection of a tax is in jeopardy, the IRS can immediately levy against a taxpayers's property. However, if it is later determined that there is no jeopardy situation but there is a tax liability, the levied amount cannot be returned. Third, if the IRS enters into an installment agreement and, in contradiction to the terms of the installment agreement, the IRS levies against the taxpayer's property, the IRS is prohibited from returning the money to the taxpayer. There are other situations where the IRS should be permitted to return proceeds of levies, without prejudice against future reinstatement of the levy, such as where the property has been levied upon prematurely or otherwise not in accordance with administrative procedures of the IRS.

Recommendation: Provide the IRS with authority to return the proceeds of levies, without prejudice against future reinstatement of the levy, if it is ". . . in the best interest of the taxpayer and the Government."

8. OFFERS-IN-COMPROMISE

Currently, under IRC section 7122, the IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability, and it is doubtful that the tax, interest, and penalties can be collected; or, there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel. This program is intended to give taxpayers with severe financial hardships the ability to compromise their liabilities, and, at the same time, help the IRS maximize the collection of revenue. However, because of the requirements mentioned above, IRS employees have been classifying accounts as currently-not-collectable, and carrying them on the IRS accounts as currently-not-collectable for as long as 10 years, rather than accepting part payment through an offer-in-compromise.

Recommendation: Allow acceptance of an offer-in-compromise in a situation ". . . where such acceptance would be in the best interest of the Government." Require that offers-in-compromise, which reduce tax liabilities by less than $50,000, be approved after a formal review by IRS management and that offers-in-compromise, reducing tax liabilities by $50,000 or more, be subject to approval by a written opinion from the Office of Chief Counsel.

9. EQUITABLE TREATMENT OF DIVORCED OR SEPARATED SPOUSES

Spouses who file joint returns and are subsequently divorced or separated frequently experience difficulty with the IRS when the IRS determines that there is a joint tax liability. The IRS generally sends notices of a possible tax deficiency only to the residence of the taxpayer listed first on the joint return. As a result, the taxpayer listed second on the joint return may receive no notice of a possible tax deficiency until the case has been sent to the Collection Division for enforcement action, and the opportunity for administrative appeal has ended. Once in collections, the IRS generally attempts to collect the full amount of the tax deficiency from whichever spouse's assets are the most readily available. Furthermore, the IRS does not discuss with either spouse the efforts it has made to collect the tax liability from the other spouse.

Recommendation: Require the IRS to send notices of deficiency to both spouses who have subsequently filed separate income tax returns. Require the IRS to inform either spouse as to whether the IRS is making any attempt to collect the tax liability from the other spouse; the general nature of the collection effort; and, the amount collected. Require the IRS to include a section on the rights and responsibilities of divorced or separated spouses in Publication 1, "Your Rights as a Taxpayer."

10. CREATE AN APPEALS PROCESS FOR CERTAIN COLLECTION CASES

Taxpayers who disagree with the IRS collection activities generally have no formal appeal procedures available to them. Appeals are only available in cases involving the "responsible officer" 100-percent penalty, offers-in-compromise, and employment tax issues. Legitimate disputes are routinely raised relating to enforcement decisions involving notices of lien, levies, seizures, and decisions not to grant installment agreements. These disputes often arise in cases where the taxpayers never received actual notice of the deficiency, often due to divorce and/or change of address. The Problem Resolution Office is not able, and should not be expected, to handle the large volume of collection cases where taxpayers have problems that deserve an independent review.

Recommendation: Require the IRS to establish an appeals function within the Appeals Division to independently review IRS denials of taxpayer requests for installment agreements. Require the IRS to establish a one-year pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division before any proposed enforcement action is taken, including lien, levy, and seizure actions. Such pilot program also should include any enforcement action where the deficiency assessment was made without the actual knowledge of the taxpayer, and any enforcement action where the deficiency assessment was made without an opportunity for the taxpayer to obtain an administrative appeal. Require the IRS to make a report to the tax-writing committees by December 31, 1992, on the effectiveness of this pilot program.

11. EXPAND ABATEMENT-OF-INTEREST AUTHORITY

Under the provisions of IRC section 6404(e), any assessment of interest on any deficiency attributable, in whole or in part, to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a "ministerial act" may be abated. This provision provides some interest abatement relief to taxpayers who experience delays in the resolution of tax disputes because of delays on the part of IRS personnel. However, in practice, the relief is quite limited due to the IRS's definition of what comprises a "ministerial act." The IRS regulations are so narrowly written and tightly administered that nearly all IRS delays are excluded from relief. For example, delays incurred prior to the IRS formally notifying the taxpayer of a deficiency sometimes result from the IRS losing records, IRS personnel transfers, extended illnesses, personnel training, or extended leave. Under current law, these examples are not considered a sufficient cause to abate interest, even though they are wholly under the control of the IRS.

Recommendation: Amend IRC section 6404(e) to provide the IRS with expanded authority to abate interest resulting from erroneous or dilatory "managerial acts." Require that IRS regulations be revised to clarify that the IRS has authority to abate interest charged to taxpayers when the IRS is responsible for certain unreasonable delays in processing taxpayer cases. Specifically, provide that the IRS has the authority to

abate interest in cases where the assessment or collection of a deficiency has been delayed for more than six months as the result of IRS's loss of tax records, or IRS personnel management decisions, to include the termination, transfer, training, and the granting of leave for any reason to IRS employees responsible for the handling the taxpayer's case, or any combination these events.

12. "RESPONSIBLE OFFICER" PENALTY LIMITATION

Under current law, persons involved in the collection and payment of certain employment taxes and withheld income taxes are personally liable for any failure to properly pay over these taxes as "responsible officers." The "responsible officer" penalty under IRC section 6651 is 100-percent of the tax amount due and is commonly referred to as the "100-percent penalty." Individuals have been held liable for the 100-percent penalty even after they have brought their employer's failure to pay to the attention of their superiors and the IRS.

Recommendation: Require the IRS to provide better notice to the public and individuals responsible for collecting and paying over taxes of their responsibilities and liabilities as a "responsible officer." Excuse from the 100-percent penalty any person who, as a responsible officer, notifies the IRS of a failure of a business to pay over taxes within 10 days of the date on which the taxes were due. Require that the notification be prior to the IRS contacting the business about the failure to pay over the taxes, and that the employee not have been directly responsible for, or benefited by, the failure to pay over the taxes. This relief would not be available to individuals who are significant owners of the business, highly-compensated employees of the business, or persons directly responsible for the decision not to pay over the taxes.

13. VOLUNTEERS WITH TAX-EXEMPT ORGANIZATIONS

Individuals who serve on the boards of tax-exempt organizations, on a volunteer or honorary basis, are often concerned that they could be held liable for unpaid taxes of the organization as a "responsible officer," even though their service is strictly voluntary in nature, and they are not involved in the day-to-day operations and financial decisions of the organization. While the liability of a responsible officer depends on the specific duties and roles of the individual involved, the IRS has not made efforts to educate the tax-exempt community on the issue.

Recommendation: Require the IRS to develop materials to better inform tax-exempt organizations of the conditions under which volunteer or honorary board members and others lending their name to a tax-exempt organization will not be treated as responsible officers, and that the IRS make such materials routinely available to tax-exempt organizations. Require the IRS to clarify its instructions to IRS employees on application of the "responsible officer" penalty with regard to honorary or volunteer members on boards of directors of tax-exempt organizations. Clarify to tax-exempt organizations that each organi-

zation must have at least one person who is a "responsible officer."

14. DISCLOSURE OF "RESPONSIBLE OFFICER" PENALTY ACTIONS

The IRS often asserts the 100-percent penalty for unpaid withheld income and employment taxes against numerous individuals considered by the IRS to be "responsible officers." Under current law, the IRS is prohibited from telling any of the potentially responsible officers whether the IRS is imposing the penalty on any other person, and whether the IRS has been successful in collecting the penalty against such a person. Individuals are unable to determine whether the IRS has made any effort to identify and collect the penalty from others, particularly those who may be more responsible or have a greater ability to pay the penalty.

Recommendation: Require the IRS to provide to a "responsible officer" being penalized for failure to properly collect and pay over taxes, the name of any other responsible officer against whom the IRS is asserting the penalty, and the status of IRS efforts to collect the penalty from any other responsible officer.

15. NOTICE OF DELINQUENT EMPLOYMENT TAX DEPOSITS

The IRS often takes from six months to two years before making an initial contact with taxpayers who have fallen behind in their payroll tax deposits, and additional months or years before taking direct enforcement action. During this period, the tax liabilities can increase significantly and collection becomes more difficult. Individuals often find out many years later, when the amount of tax due is large, that the IRS has determined that they are liable for the entire tax liability as a "responsible officer."

Recommendation: Require the IRS to initially contact all taxpayers with delinquent payroll accounts within 30 days of the first indication that there has been a failure to make a timely and complete deposit and that enforced collection action will be forthcoming.

16. ANNUAL DESIGNATION OF RESPONSIBLE OFFICERS

Individuals often do not realize that they are potentially a "responsible officer" and liable for the failure to pay withheld income and employment taxes until the IRS contacts them and asserts the 100-percent penalty. In part, this is because the employees of a business have not been informed of their duties as responsible officers.

Recommendation: Require employers to list on their annual tax return, the names of employees responsible for collecting and paying over withheld taxes to the IRS.

17. NOTIFICATION TO TAXPAYERS OF OVERPAYMENTS

When the IRS cannot associate a taxpayer's payment with a balance due, the IRS keeps the money but does not inform the taxpayer of the overpayment. For example, a check that is separated from a balance-due income tax return, which is subsequently lost, may

not get credited to that taxpayer's account. These funds are placed in an IRS account and can remain there indefinitely.

Recommendation: Require that the IRS make a reasonable attempt to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with any tax return or outstanding tax liability.

18. EXTENSION OF TIME TO PAY TAXES

Taxpayers frequently are confronted with situations where they do not have the ability to pay their tax liability when it is due. Current law makes various provisions for this situation, including installment agreements, offers-in-compromise, and extensions of time for the payment of taxes. These options are available to the taxpayer at the discretion of the IRS. Taxpayers are entitled to be advised of the relief potentially available to them, and to apply for that relief if they think they qualify under IRS guidelines. While the IRS has made efforts, in recent years, to advise taxpayers about installment agreements and offers-in-compromise, the existence of an extension of time for the payment of tax under IRC section 6161 is little known or publicized. IRS employees often deny the availability of such relief.

Recommendation: Require the IRS to better publicize the availability of the extension of time to pay provisions of IRC section 6161 by: referring to Form 1127 in instruction packets for Forms 1040 and 1040A; discussing the availability and conditions necessary for obtaining an extension of time to pay tax in Publication 17; including Form 1127 with instructions in Package X; and, informing IRS personnel that taxpayers may request an extension of time to pay tax and that Form 1127 is available for making such a request.

19. ERRONEOUS AND FRAUDULENT INFORMATION RETURNS

Taxpayers often need to contact payors issuing information returns, such as Forms W-2 and 1099, in order to resolve questions about the accuracy of such information provided to the IRS. Currently, payors are only required to provide their name and address on information returns. As a result, taxpayers have difficulty in contacting the payor and resolving questions quickly. In addition, some taxpayers have suffered significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns. These false returns have been filed by payors intent on either defrauding the IRS or harassing taxpayers. Under current law, these taxpayers are unable to recover damages in these circumstances.

Recommendation: Require that information returns contain the payor's contact person (or office) and phone number. Provide that, if any person willfully files a false or fraudulent information return with respect to payments made to another person, such person may bring a civil action for damages against the person filing such return. Provide that damages awarded in such cases be at least $5,000, and that the plaintiff must bring action within six years from the time the fraudulent return was filed with the IRS.

20. IRS RESPONSIBILITY TO VERIFY ACCURACY OF INFORMATION RETURNS

Taxpayers frequently encounter difficulties when a payor issues an erroneous or fraudulent information return and refuses to correct the information, and report the change to the IRS. Recent litigation has highlighted the problem of taxpayers trying to dispute incorrect information returns and situations where the taxpayer has been put in the position of attempting to prove a negative. For example, taxpayers often must prove that the taxpayer did not receive certain income as reported on the information return.

Recommendation: Require that the IRS, when making a determination of a tax deficiency based on an information return, take reasonable steps to corroborate the accuracy of the information return, when such return is disputed by the taxpayer. The reasonable steps which the IRS must take to corroborate the disputed information return would vary in response to the facts and circumstances of each case, but would in all cases meet the tests outlined in *Portillo* v. *Commissioner.* Require, in such cases, that the IRS must make a thoughtful and considered determination that the Government is entitled to an amount not yet paid.

21. EXPANSION OF ATTORNEY-FEES PROVISION

Current law provides for the payment of attorney fees and certain costs by the Government when taxpayers substantially prevail on the merits of their tax disputes and they establish that the Government's position was not substantially justified. This puts a burden on taxpayers to prove that, not only was the Government in error, but that the Government was not substantially justified in taking its position. At times, taxpayers are subject to administrative and litigation costs as the result of the arbitrary, capricious, or malicious actions of IRS employees. In addition, taxpayers sometimes represent themselves in IRS administrative proceedings and in subsequent court litigation. There is no provision under current law that allows taxpayers to be compensated for the time they devote to their own case, even if they win. Also, the IRS has taken the position that attorney fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations.

Recommendation: Amend IRC section 7430 to facilitate the ability of taxpayers to recover administrative and litigation costs by eliminating the current requirement that the taxpayer establish that the position of the Government in the proceeding was not substantially justified. Give discretion to the court in tax cases to assess all or a portion of any award against an IRS employee, if the court determines that the proceeding resulted from any arbitrary, capricious, or malicious act of the employee. Allow persons who act as their own counsel to be awarded administrative and litigation costs. Clarify that a taxpayer cannot be required to agree to an extension of the statute of limitations to satisfy the requirement that a taxpayer has exhausted available administrative remedies in order to be eligible for recovering attorney fees.

22. IMPROVE THE CLARITY OF DEFICIENCY NOTICES

Current law requires the IRS to describe the basis for and identify the amounts of tax due, interest, penalties, and any other additional amounts owed in the notice of deficiency sent to taxpayers. The IRS is not required to separately set forth, in the notice, the components and explanation for each adjustment. As a result, taxpayers frequently have difficulty understanding what portion of the total adjustment is attributable to any particular tax issue. This confusion leads to additional correspondence with the IRS, delay in taxpayers complying with the tax law, and additional interest being charged to taxpayers.

Recommendation: Amend IRC section 7522 to require that the IRS set forth the components of and explanation for each specific adjustment which is the basis for the total tax deficiency.

23. IMPROVED CHANGE-OF-ADDRESS PROCEDURES

Taxpayers frequently encounter problems with the IRS as a result of changing their address, and not having IRS examination and collection correspondence forwarded to their new address. Generally, IRS posts the new address of a taxpayer only upon the filing of the subsequent tax return which contains a new address. This results in the IRS not having the correct address information during the interim. Also, the IRS does not routinely update all of its records with new address information. The IRS currently has a form with which taxpayers can notify the IRS of their new address, but this form is seldom utilized by individual taxpayers. Many of the same problems are created with a taxpayer's change of name.

Recommendation: Require the IRS to include a check-off box on the envelopes it provides to taxpayers for use in mailing tax returns and responses to IRS notices, so that taxpayers can indicate a change of name or address. Require that IRS, by April 15, 1992, institute procedures for timely updating all IRS records with change-of-address information provided to the IRS by taxpayers.

24. PROTECTIONS FOR TAXPAYERS GIVEN ERRONEOUS IRS ADVICE

There are a number of disputes resulting from taxpayer reliance on erroneous written advice provided by the IRS. Questions have been raised about the extent to which taxpayers should be entitled to rely on "initial guidance" provided by IRS. Under current law, there are provisions to abate penalties when a taxpayer has relied on written advice provided by the IRS which is subsequently determined to be erroneous. However, taxpayers are still liable for the tax itself, as well as interest on the amount of any resulting underpayment.

Recommendation: Amend IRC section 7805 to provide that if a taxpayer takes any position or other action in reasonable reliance on initial guidance published by the IRS in the form of press releases, information releases, or revenue rulings, any later position by the IRS which is inconsistent with the earlier guidance would not apply to the detriment of the taxpayer.

25. EQUALIZING INTEREST RATES

Taxpayers are charged interest on underpayments of tax at a rate equal to the Federal short-term rate, plus three percentage points. In contrast, taxpayers receive interest on an overpayment of tax at a rate equal to the Federal short-term rate, plus two percentage points. Taxpayers regard the interest rate differential as inequitable.

Recommendation: Amend IRC section 6621(a) to provide that the IRS and taxpayers pay the same interest rate, the Federal short-term interest rate, plus three percentage points.

26. TAXPAYER-RIGHTS EDUCATION PROGRAM FOR REVENUE OFFICERS

The IRS is currently conducting a program to educate revenue officers concerning rights of taxpayers.

Recommendation: Require the IRS to report to the tax-writing committees on the scope and content of the IRS's taxpayer-rights education program for revenue officers by April 15, 1992, and on the effectiveness of these IRS efforts by December 31, 1992.

27. MISCONDUCT BY IRS EMPLOYEES

The IRS Inspection Division investigates numerous taxpayer allegations and complaints about misconduct by IRS employees. However, these investigations and the resulting disciplinary actions, if any, are not publicly reported. This practice perpetuates a public perception that allegations of misconduct are not investigated and that abusive conduct by IRS employees goes unpunished.

Recommendation: Require the IRS to make a report to the tax-writing committees every two years, beginning December 31, 1992, on all cases involving complaints about IRS employee misconduct, and on the disposition of these complaints. Require that the report be prepared in a non-disclosable and disclosable manner, as provided in IRC section 6103.

28. SPECIAL NEEDS OF TAXPAYERS

Taxpayers with special needs continue to experience difficulty in complying with the requirements of our tax system. For example, hearing-impaired taxpayers have difficulty in obtaining tax assistance from the IRS. Elderly taxpayers have difficulty in getting tax assistance concerning the tax treatment of Social Security benefits. In addition, some taxpayers with impaired vision would benefit from having tax forms and instructions printed in large-size print. Non-English speaking taxpayers would benefit from having certain work-sheets and instructions printed in their primary language.

Recommendation: Require the IRS to conduct a study of reforms to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to obtain information about the tax system and what they must do to comply with the law. Require that the IRS report to the tax-writing committees by December 31, 1992.

29. NOTICE OF DEFICIENCIES

The IRS is required to send notices of deficiency issued under IRC section 6212 to taxpayers by registered or certified mail. In spite of this requirement, many taxpayers still do not receive actual notice from the IRS of their tax deficiency. If a registered or certified letter is returned to the IRS by the Postal Service as undeliverable, the IRS continues its collection efforts.

Recommendation: Require the General Accounting Office (GAO) to study the effectiveness of current IRS efforts to notify taxpayers with regard to tax deficiencies issued under IRC section 6212, the number of registered or certified letters and other notices returned to the IRS as undeliverable, any follow-up action taken by the IRS to locate taxpayers that did not receive actual notice, the effect that failures to receive actual notice have on taxpayers, and recommendations on how the IRS can better notify taxpayers of tax deficiencies. Require that the GAO report to the tax-writing Committees by December 31, 1992.

30. CLARITY OF IRS FORMS AND NOTICES

Taxpayers continue to experience difficulty in complying with the requirements of the Federal tax system as the result of unclear or inaccurate notices, forms, and instructions. The IRS has formed various working groups in an attempt to improve the quality of IRS's communications with the public, and yet problems continue to persist. For example, IRS notices sometimes contain telephone numbers for taxpayers to call for assistance. Concerns have been raised that these telephone numbers are inaccurate and do not always result in taxpayers reaching IRS employees capable of providing assistance.

Recommendation: Require the GAO to annually study the accuracy and clarity of 25 commonly used IRS forms, notices, and publications and to report their findings to the tax-writing Committees. Require the GAO to examine the suitability and usefulness of IRS telephone numbers on IRS notices. Require that the GAO seek and consider the comments of organizations representing taxpayers, employers, and tax professionals. Require that the initial report be due by December 31, 1992.

31. IRS EMPLOYEE SUGGESTIONS

The IRS has instituted several programs to encourage and reward employees who make suggestions for improving the administration of the tax system. However, although the IRS recognizes and pays employees for the value of their suggestions, the IRS does not always implement their recommendations. Worthwhile ideas for lessening the burdens on taxpayers and for improving tax administration are often neglected. Problems that are not fixed lead to frustration and cynicism on the part of taxpayers and IRS employees.

Recommendation: Require the GAO to conduct a review of the IRS employee suggestion programs, including a follow-up on all suggestions which were accepted and rewarded by the IRS, an analysis as to how many suggestions were implement-

ed, their impact on taxpayers and tax administration, and what caused the remaining suggestions to be ignored. Require the GAO report by December 31, 1992.

32. CONSISTENT TREATMENT OF LATE FILERS

Under the current penalty system, there is an inequity between voluntarily-filed delinquent returns and the use of the substitute-of-return procedures. Taxpayers who file delinquent returns must pay a failure-to-file penalty under IRC section 6651 from the due date of the return, whereas, the taxpayer who forces the IRS to utilize the substitute-of-return procedures is not assessed the penalty until billed by the IRS.

Recommendation: Amend IRC section 6651 to require that the failure-to-file penalty apply to taxpayers subject to the substitute-for-return process in the same manner as it applies to delinquent filers.

33. EXTEND 45-DAY INTEREST-FREE PERIOD FOR ISSUING REFUND

When a taxpayer applies for an income tax refund, the IRS is permitted 45-days under IRC section 6611 to process the return and send a refund check, without paying interest. There is no similar interest-free period for other types of taxes such as employment, gift, estate and excise taxes.

Recommendation: Amend IRC section 6611 to extend the Government's 45-day interest-free period for paying income tax refunds to cover all types of taxes.

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